# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE

ANDREW JOSTEN LOVINGOOD	)
Plaintiff,	) ) ) Docket No.: 3:19-CV-00009
v.	)
BILL JOHNSON,	)
DERRICK GRAVES, and	)
MONROE COUNTY, TENNESSEE	) )
Defendants.	

# <u>PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT</u> AGAINST DEFENDANT DERRICK GRAVES AND MONROE COUNTY

COME NOW, Andrew Lovingood (hereinafter "Mr. Lovingood" or "Plaintiff"), by and through undersigned counsel, hereby moves the Court under Rule 56 of the *Federal Rules of Civil Procedure* for entry of an order granting partial summary judgment against Defendant Graves on violation of the Fourth Amendment of the United States Constitution, through 42 U.S.C. § 1983, for use of excessive force on Plaintiff while acting under color of law (Count II of the Complaint), and the underlying constitutional violation with respect to his *Monell* claims (Counts III and IV).

On April 19, 2014, Mr. Lovingood was brutally assaulted by Defendant Graves, whom was at that time a sworn deputy with the Monroe County Sherriff's Department. In April 2015, a grand jury indicted Graves for assaulting Lovingood in violation of T.C.A. § 39-13-101 and for official misconduct in violation of T.C.A. § 39-16-402. On March 13, 2017, Graves entered a guilty plea to Class A misdemeanor assault and Class A misdemeanor attempted official misconduct. Graves was given a probated sentence of two concurrent terms of eleven months and 29 days pursuant to the State's judicial diversion statute. By virtue of this plea, Defendants Graves and Monroe County

cannot dispute the material facts of Count II (excessive force) and the underlying constitutional violation with respect to Plaintiff's *Monell* claims (Counts III and IV).

Plaintiff supports this motion with facts which are conclusively established for the purposes of this motion through the criminal prosecution of Graves under the doctrine of collateral estoppel. Plaintiff also references materials that cannot reasonably be disputed, including, *inter alia*, Graves' sworn deposition and jail surveillance footage. There is no genuine dispute regarding any material fact related to this motion.

RESPECTFULLY SUBMITTED, this the 9th day of July, 2020.

**BOWLIN STEPHENS PLLC** 

BY:

\_for the Firm

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## **CERTIFICATE OF SERVICE**

I hereby certify that, on July 9, 2020, a copy of Plaintiff's Motion for Summary Judgment and Memorandum of Law in Support was transmitted for service via Pacer and the Court's Electronic Court Filing System to counsel for all parties. Other parties will be served via United States Postal Service postage prepaid.

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